IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 6142 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SULEMANBHAI P MANSURI

Appearance:
MR HARDIK C RAWAL for Petitioner
NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/11/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 227 of the Constitution of India challenging the Award passed by the Industrial Tribunal, Ahmedabad in Reference (I.T.) No.109 of 1984. The respondent is an employee of the Gujarat State Road Transport Corporation and he is serving on the post of Conductor. He was subjected to departmental proceedings for various charges. He was charge-sheeted on three counts and the charges levelled against him were as under :

1. That he did not issue tickets to one female passenger and three male

passengers of one group after they boarded bus from Sayala for Dolia even though he collected fare from them aggregating to Rs.3/-;

2. Two policemen along with one accused boarded the bus from Limdi for Rajkot and accused was issued ticket immediately, but the two policemen who were travelling on police warrant No.81 gave the same to the respondent. However, he returned the same and did not issue any tickets to them with an oblique motive to record the ticket numbers over that police warrant after collecting the same issued to the passengers who had to get down at Rajkot;

3. He on seeing the checking party made an unsuccessful attempt to issue tickets to those passengers and did not open the entry door of the bus.

On the aforesaid charges, ultimately, a departmental enquiry was conducted against the respondent-workman and on conclusion of the enquiry, he was subjected to show cause notice regarding punishment and ultimately, the Disciplinary Authority ordered for withholding of four annual increments with permanent effect and was also given a warning. Said order was challenged by the respondent-workman by way of departmental appeal and the appellate authority on 2.6.1981 modified the said order of disciplinary authority by substituting withholding four years' annual increments to withholding three years' annual increments. Ultimately, the aforesaid order of punishment of withholding three increments with permanent effect was subjected to industrial dispute. The aforesaid dispute was referred to the Industrial Tribunal, Ahmedabad under Section 10(1) of the Industrial Disputes Act by the Commissioner of Labour, Ahmedabad and ultimately, the same was registered as Reference (I.T.)No.109 of 1984. The Industrial Tribunal, Ahmedabad, ultimately, by its order dated 7th March, 1990 set aside the order of minor penalty, i.e. warning, which was issued by the disciplinary authority to the respondent-workman and so far as punishment of withholding of three yearly

increments with permanent effect is concerned, the Labour Court modified the same and instead of permanent effect, the penalty was modified by the Labour Court to withholding his annual increments for three years without permanent effect. The aforesaid order is challenged by the S.T. Corporation in the Special Civil Application.

At the time of admitting this petition, the Division Bench of this Court stayed the aforesaid order of the Labour Court by granting interim order regarding reducing the penalty of withholding increments with future effect by substituting the same without any future effect.

At the time of hearing this Special Civil Application, Mr.Raval for the petitioner is present. On behalf of the respondents, even though they are served, nobody has remained present, but, it was argued by Mr.Raval that so far as the departmental enquiry is concerned, it was found that the enquiry was conducted properly and that the concerned workman had not challenged the same and only argument that was canvassed before the Labour Court was regarding punishment aspect. Mr.Raval has also relied upon the judgment of this Court in Gujarat State Road Transport Corporation v. Kachraji Motiji Parmar, 1993(1) GLR 302.

I have heard Mr.Raval and I have gone through the order of the Industrial Tribunal. It is not in dispute that the departmental enquiry was initiated against the concerned workman by following the principles of natural justice and at paragraph 5 of the judgment, the Industrial Tribunal has observed that on behalf of the concerned workman, the correctness of the finding recorded by the Disciplinary Authority against the concerned workman regarding the charges levelled against him is not challenged. The main argument was regarding double punishment, i.e. withholding of increment as well as giving warning. So far as the order regarding giving warning is concerned, the Labour Court has set aside the same. I do not find any infirmity in so far as the aforesaid order regarding setting aside the aforesaid second penalty is concerned. However, question which requires consideration is whether the Labour Court in the facts and circumstances of the case should have interfered with the punishment of withholding of three increments with future effect which was awarded by the Disciplinary Authority. The Industrial Tribunal has found that the penalty is harsh and it is shockingly disproportionate and that the amount involved was a petty amount of Rs.3/- only and regarding second charge, it was

merely an attempt to commit misappropriation. With respect, I am unable to agree with the view expressed by the Industrial Tribunal in this behalf. When the finding recorded by the Disciplinary Authority is not challenged, it is clear that the respondent-workman had not issued ticket to some passengers. Whether the amount involved for not issuing tickets is Rs.3/- or not is irrelevant. In fact, considering the amount in question, the Disciplinary Authority itself did not think it fit to dismiss the employee from service and ultimately, his services were continued. The Disciplinary Authority is the best Judge to consider suitability of awarding punishment in such cases. In the facts and circumstances of the case, therefore, it cannot be said that the punishment awarded by the Disciplinary Authority was in any way shocking or disproportionate. This is not a case in which the Industrial Tribunal should have interfered with the punishment order by invoking provisions of Section 11A of the Act. This Court in Gujarat State Road Transport Corporation v. Kachraji Motiji Parmar, 1993(1) GLR 302 has observed as under :-

> "... Under Sec. 11A of the Industrial Disputes Act the Industrial Tribunal or the Labour Court is not having unguided power to set aside the judicial order passed by the management. The power under Sec. 11A has to be exercised judicially and the Industrial Tribunal or Labour Court can interfere with the decision of the Management under Sec. 11A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. This Court has repeatedly held that misappropriation, if held established, would be a major misconduct and normally dismissal order passed by the competent authority should not be interfered with by the Labour Court or the Industrial Court under Sec. 11A of the Industrial Disputes Act .... "

Even regarding the second charge, the Labour Court has given absurd reasoning by observing that it was merely an attempt to commit an offence. The Labour Court has, therefore, clearly exceeded its jurisdiction in reaching the aforesaid conclusion. In the facts and circumstances of the case, the Labour Court should not have interfered

with the Award of withholding of three yearly increments with permanent effect. Since the employment of the respondent was already saved by the Department, it was not necessary to show any leniency by the Labour Court by invoking Section 11A of the Industrial Disputes Act. The concerned workman also should feel that whatever he has done is wrong and he cannot be allowed to go scot-free with such light punishment. In any case, it was not a case in which the Labour Court should have interfered with the punishment order and it cannot be said that the punishment was in any way disproportionate to the charges proved against the concerned workman. Under the aforesaid circumstances, therefore, the order of the Labour Court is required to be set aside and the same is accordingly set aside. The punishment which was awarded against the concerned workman by the Appellate Authority is found to be just and proper and there was no reason to invoke Section 11A in the facts of the case. The order of the Labour Court is accordingly set aside. Rule is accordingly made absolute with no order as to costs.

6th November, 2000 (P.B. Majmudar, J.)

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(apj)